IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 6994 of 2007

CRIME NO. 438/2007 OF KANJAR POLICE STATION)

APPLICANT/ACCUSED NO.2

SANUP VIJAYAN,
OLAMATTOM, THODUPUZHA P.O.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007 ALONG WITH B.A.NO. 7047/20907, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.Nos.6994 & 7047 of 2007

Dated this the 21st day of November 2007

O R D E R

These applications are for anticipatory bail. Petitioners are accused 1 and 2. They face allegations in a crime registered initially under Section 324 I.P.C. Subsequently, the section of offence has been altered to 326 I.P.C realising the fracture suffered by the alleged victim. The petitioners are student organisation activists. The incident is a sequel to inter association rivalries. The petitioners, along with two others, who were not students, are alleged to have attacked the de facto complainant outside the gate of the campus resulting in grievous injury to the victim. Stone is the weapon allegedly used for infliction of injury. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. There are allegations and counter allegations. Case and counter case have been registered. The de facto complainant in this crime owes allegiance to the party which is a constituent of the ruling front. Because of that, serious allegations have been raised against the petitioners alone unjustifiably. The learned counsel for the petitioners further submits that the petitioners are to write their examination till 27/11/2007. If they were arrested and detained in custody during the said period, the petitioners will

virtually lose a long period of time in their educational curriculum. In these circumstances, appropriate directions may be issued to save the petitioner from irreparable prejudice. Such arrest shall affect their education.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the State has no objection in appropriate safeguards being provided to enable them to write their examination. There are no circumstances whatsoever justifying the invocation of the discretion under Section 438 Cr.P.C. The investigation reveals that the counter allegations raised by the petitioners are not justified at all and that the petitioners were involved in a deliberate attempt to attack the victims along with the outsiders from the college.

4. Having considered all the relevant inputs I find merit in the opposition by the learned Public Prosecutor. I am satisfied that this is a fit case where the petitioner must resort to the normal and ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail. But however I am satisfied that to avoid the unwholesome consequence of retardation in their educational curriculum, the petitioners can be given time till 28/11/2007 to appear before the learned Magistrate and seek regular bail.

5. In the result, these petitions are allowed in part. Following directions are issued under Section 438 Cr.P.C in favour of the petitioners.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 28/11/2007. Their application for bail and applications, if any, filed by the prosecution shall all be considered by the learned Magistrate on the date of surrender itself, if sufficient prior notice has been given to the Prosecutor in charge of the case. The petitioners shall abide by the orders to be passed by the learned Magistrate in such applications.

(ii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(iv) If they were arrested prior to 28/11/2007, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 28/11/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007